

Shiva Delrahim Beck (SBN 228841)

Email: sbeck@gardere.com

Todd A. Murray (*Pro Hac Vice*)

Email: tmurray@gardere.com

Thomas C. Scannell (*Pro Hac Vice*)

Email: tscannell@gardere.com

GARDERE WYNNE SEWELL LLP

2021 McKinney Avenue, Suite 1600

Dallas, Texas 75201

(214) 999-3000

(214) 999-4667 (fax)

Attorneys for William M. Aisenberg and Jeffrey Cordes

UNITED STATES BANKRUPTCY COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
SAN FERNANDO VALLEY DIVISION

In re:

ICPW Liquidation Corporation, a California
corporation,¹

Debtor and Debtor in Possession.

Lead Case No. 1:17-bk-12408-MB

Jointly administered with: 1:17-bk-
12409-MB

Chapter 11 Cases

In re:

ICPW Liquidation Corporation, a Nevada
corporation,²

Debtor and Debtor in Possession.

**AMENDED JOINT STIPULATION
RELATING TO DIRECTORS &
OFFICERS INSURANCE POLICIES**

☒ Affects both Debtors

☐ Affects ICPW Liquidation Corporation, a
California corporation only

☐ Affects ICPW Liquidation Corporation, a
Nevada corporation only

¹ Formerly known as Ironclad Performance Wear Corporation, a California corporation.

² Formerly known as Ironclad Performance Wear Corporation, a Nevada corporation.

Jeffrey Cordes and William M. Aisenberg (collectively, “Insureds”), hereby enter into this amended stipulation (the “Amended Stipulation”) with ICPW Liquidation Corporation, a California corporation, formerly known as Ironclad Performance Wear Corporation, a California corporation and ICPW Liquidation Corporation, a Nevada corporation, formerly known as Ironclad Performance Wear Corporation, a Nevada corporation (collectively, the “Debtors”) and the Official Committee of Equity Holders (“OCEH”), by and through their respective undersigned counsel of record attorney, in reference to the following facts:

RECITALS

1. On September 8, 2017 (the “Petition Date”), the Debtors each filed a voluntary petition for relief under chapter 11 of the title 11 of the United States Code, et seq. (the “Bankruptcy Code”). [Docket No. 1].

2. On September 12, 2017, the Court entered an order granting the Debtor’s motion to approve the joint administration of the two chapter 11 cases. [Docket No. 25].

3. On October 3, 2017, Mr. Cordes timely filed his proof of claim with the Bankruptcy Court as Claim No. 8-1, asserting a claim in the amount of \$166,906.75, which includes \$12,850.00 as a priority claim (the “Cordes Claim”).

4. On October 3, 2017, Mr. Aisenberg timely filed his proof of claim with the Bankruptcy Court as Claim No. 7-1, asserting a claim in the amount of \$129,406.75, which includes \$12,850.00 as a priority claim (the “Aisenberg Claim”).

5. As of the Petition Date, the Debtors held a professional liability insurance policy through QBE Insurance Corporation, policy number QPL019727, covering the period of May 11, 2017 through June 1, 2018 (the “D&O Policy”) [Docket Nos. 133-1, 133-2].

6. The D&O Policy provides³ the following coverage to the insureds: (i) the Insurer shall pay, on behalf of an Insured, Loss on account of a Claim first made during the Policy Period to the extent that such Loss has not been paid or indemnified by any Company; (ii) the Insurer shall pay, on behalf of a Company, Loss on account of a Claim first made

³ To the extent there is any discrepancy between the terms of the D&O Policy and the terms of any portion of this Amended Stipulation, the terms of the D&O Policy shall govern.

1 during the Policy Period to the extent the Company pays or indemnifies an Insured Person for
2 such Loss; and (iii) the Insurer shall pay, on behalf of a Company, Loss on account of a
3 Securities Claim, and Defense Costs on account of a Securityholder Derivative Demand
4 Investigation, first made during the Policy Period.⁴

5 7. Section XVIII of the D&O Policy provides: “(A) Bankruptcy or insolvency of
6 any Insured shall not relieve the Insurer of its obligations nor deprive the Insurer of its rights
7 or defenses under this Policy. (B) The coverage provided by this Policy is intended first and
8 foremost for the benefit and protection of Insured Persons. In the event a liquidation or
9 reorganization proceeding is commenced by or against a Company pursuant to United States
10 bankruptcy law: (1) the Company and the Insureds hereby agree not to oppose or object to
11 any efforts by the Insurer, the Company or an Insured to obtain relief from any stay or
12 injunction issued in such proceeding; and (2) the Insurer shall first pay Loss on account of a
13 Claim for a Wrongful Act occurring prior to the date such liquidation or reorganization
14 proceeding commences, and then pay Loss in connection with a Claim for a Wrongful Act
15 occurring after the date such liquidation or reorganization proceeding commences.”

16 8. The term “Claim” under the D&O Policy shall include, but is not limited to, (i)
17 an investigation, evidenced by any written document, including a subpoena, target letter or
18 search warrant, against an Insured Person for a Wrongful Act; (ii) a civil or criminal
19 proceeding, evidenced by the service of a complaint or similar pleading in a civil proceeding

20 9. Mr. Cordes and Mr. Aisenberg are “insured” persons under the D&O Policy.
21 [Docket Nos. 133-1, 133-2]. The D&O Policy provides coverage for insured persons with
22 respect to legal expenses incurred as a result of any investigation conducted by the Debtors or
23 any governmental agency of the insured, and any breach of duty claims pursued by the
24 Debtors or shareholders against the insured. [Docket Nos. 133-1, 133-2].

25 10. On October 20, 2017, Movants file the Motion for Relief. [Docket Nos. 132-
26 136]. The Motion for Relief sought the following relief: (i) to proceed with the AAA
27

28 ⁴ Capitalized terms in paragraphs 6-8 only shall have the meaning ascribed to such terms as in the D&O Policy.

1 Proceeding⁵ and (ii) to pursue insurance coverage proceeds to which [Movants] may be, or
2 may become, entitled. (Motion for Relief at 7:21-22).

3 11. On October 24, 2017, Movants were served with subpoenas to produce
4 documents by the United States Securities and Exchange Commission (“SEC”) in connection
5 with an investigation by the SEC of Ironclad Performance Wear Corp., FW-04203.

6 12. A hearing (the “November 15th Hearing”) on the Motion for Relief was held
7 on November 15, 2017 at 1:30 p.m.

8 13. The Motion was bifurcated into two separate matters to address (i) issues
9 related to certain D&O Policies, which was continued to December 12, 2017 at 1:30 p.m. and
10 (ii) issues related to whether the arbitration proceeding should proceed outside the purview of
11 the Bankruptcy Court, specifically with reference to the claims and/or defenses of the
12 Debtors’ estates against Movants, which was held on February 27, 2018.

13 14. At the November 15th Hearing, the Court requested that the parties meet and
14 confer and come up with an interim request in connection with the amount of reimbursement
15 sought by Claimants.

16 15. As a result, Claimants, the Debtors, and the OCEH agreed on a certain amount
17 to be released to Claimants in accordance with the D&O Policy on an interim basis, without
18 prejudice to Claimants’ rights to seek further amounts under the D&O Policy (the “Joint
19 Stipulation”) [Docket No. 300].

20 16. On December 11, 2017, the Court entered an Order Approving Joint
21 Stipulation Relating To Directors & Officers Insurance Policies [Docket No. 331].

22 17. On January 26, 2018, the OCEH filed a Complaint against Claimants (the
23 “Adversary Proceeding”) [Docket No. 421].

24 18. Claimants, the Debtors, and the OCEH have agreed to amend the Joint
25 Stipulation.
26
27

28 ⁵ Capitalized terms not otherwise defined herein shall have the meaning ascribed to such term as the Motion for Relief.

1 **NOW THEREFORE**, subject to the approval of the Bankruptcy Court, Claimants, the
2 Debtors, and the OCEH hereby agree as follows:

3 **AMENDED STIPULATION AND AGREEMENT**

4 Paragraph “A” of the Joint Stipulation is hereby amended as follows⁶:

5
6 A. D&O Policy Reimbursement. Claimants shall be permitted to
7 use the proceeds of the D&O Policy to obtain reimbursement for the expenses
8 they incurred or will incur on account of the Claims filed with the Insurer in
9 the amount of \$400,000, in the aggregate, on an interim basis, without
10 prejudice to seek further amounts. For purposes of this stipulation, and
11 without prejudice to Claimants’ rights, Claims refer solely to the investigation,
12 any proceedings initiated by the SEC, and the Adversary Proceeding.
13 Claimants reserve their rights to expand their permitted use of proceeds and/or
14 right to indemnification to other Claims by first, proposing a stipulation and
15 proposed order to counsel for the OCEH and Debtors via email. If counsel for
16 the OCEH or Debtors does not provide an agreement or comments to the
17 proposed stipulation within four (4) business days after the initial request is
18 made, Claimants may file a “Notice of Request to Seek D&O Reimbursement”
19 (the “Notice of D&O Request”) with the Bankruptcy Court (to the extent the
20 Bankruptcy Cases are still pending). Parties in interest will have five (5)
21 business days to file a response to the Notice of D&O Request. If a response is
22 not timely filed, Claimants may file a Notice of Non-Opposition to the Notice
23 of D&O Request and have the Bankruptcy Court enter a further order,
24 expanding the use of proceeds to other Claims. If a response is filed, the Court
25 shall set a hearing on the Notice of D&O Request within fourteen (14)
26 calendar days.

27
28

⁶ All other terms and conditions of the Joint Stipulation are unamended and remain in full force and effect.

STIPULATED AND AGREED TO AS OF FEBRUARY 28, 2018

William M. Aisenberg and Jeffrey Cordes ICPW Liquidation Corporation, *et al.*

By their counsel of record By their counsel of record

GARDERE, WYNNE, SEWELL LLP LEVENE, NEALE, BENDER, YOO & BRILL,
L.L.P.

By: /s/ Shiva Delrahim Beck
Todd A. Murray
Shiva Delrahim Beck
Thomas C. Scannell

By: _____
Ron Bender
Monica Y. Kim
Krikor J. Meshefejian

Official Committee of Equity Holders

By their Special Litigation Counsel

SOLOMON & CRAMER LLP

By: _____
Andrew Solomon

1 **STIPULATED AND AGREED TO AS OF FEBRUARY 28, 2018**

2
3 **William M. Aisenberg and Jeffrey Cordes ICPW Liquidation Corporation, et al.**

4 By their counsel of record

By their counsel of record

5
6 GARDERE, WYNNE, SEWELL LLP

LEVENE, NEALE, BENDER, YOO & BRILL,
L.L.P.

7
8 By: /s/ Shiva Delrahim Beck

9 Todd A. Murray
Shiva Delrahim Beck
10 Thomas C. Scannell

By: 

Ron Bender
Monica Y. Kim
Krikor J. Meshefejian

11 **Official Committee of Equity Holders**

12 By their Special Litigation Counsel

13
14 SOLOMON & CRAMER LLP

15
16 By: /s/ Andrew Solomon

Andrew Solomon

STIPULATED AND AGREED TO AS OF FEBRUARY 28, 2018

William M. Aisenberg and Jeffrey Cordes ICPW Liquidation Corporation, *et al.*

By their counsel of record By their counsel of record

GARDERE, WYNNE, SEWELL LLP LEVENE, NEALE, BENDER, YOO & BRILL,
L.L.P.

By: /s/ Shiva Delrahim Beck
Todd A. Murray
Shiva Delrahim Beck
Thomas C. Scannell

By: _____
Ron Bender
Monica Y. Kim
Krikor J. Meshefejian

Official Committee of Equity Holders

By their Special Litigation Counsel

SOLOMON & CRAMER LLP

By: 
Andrew Solomon

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 2021 McKinney Avenue, Suite 1600, Dallas, TX 75201.

A true and correct copy of the foregoing document described as **AMENDED JOINT STIPULATION RELATING TO DIRECTORS & OFFICERS INSURANCE POLICIES** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING

(NEF): Pursuant to controlling General Order(s) and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On March 1, 2018, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) stated below:

- Ron Bender: rb@lnbyb.com (counsel to Debtors)
- Cathrine M Castaldi: ccastaldi@brownrudnick.com (counsel to Creditors' Committee)
- Russell Clementson: russell.clementson@usdoj.gov (counsel to United States Trustee)
- Aaron S Craig: acraig@kslaw.com, lperry@kslaw.com (Big Time Products, LLC)
- Matthew A Gold: courts@argopartners.net (counsel to Argo Partners)
- Monica Y Kim: myk@lnbrb.com, myk@ecf.inforuptcy.com (counsel to Debtors)
- Jeffrey A. Krieger: jkrieger@ggfirm.com, kwoodson@greenbergglusker.com; calendar@greenbergglusker.com, jking@greenbergglusker.com (counsel to Brighton-Best International)
- Samuel R. Maizel: Samuel.maizel@dentons.com, Alicia.aguilar@dentons.com, docket.general.lit.LOS@dentons.com, Tania.moyron@dentons.com (counsel to Equity Security Holders' Committee)
- Krikor J Meshefejian: kjm@lnbrb.com (counsel to Debtors)
- Tania M Moyron: tania.moyron@dentons.com, chris.omeara@dentons.com (counsel to Equity Security Holders' Committee)
- S Margaux Ross margaux.ross@usdoj.gov (counsel to United States Trustee)
- Susan K. Seflin sseflin@brutzkugubner.com (counsel to Financial Advisor Province)
- John M. Stern john.stern@oag.texas.gov, bk-mbecker@oag.texas.gov (Creditor Texas Comptroller of Public Accountants)
- United States Trustee (SV) ustregion16.wh.ecf@usdoj.gov (United States Trustee)
- Sharon Z. Weiss: sharon.weiss@bryancave.com, raul.morales@bryancave.com (Radians Wareham Holdings, Inc.)

1 **2. SERVED BY UNITED STATES MAIL:**

2 On *(date)* March 1, 2018, I served the following persons and/or entities at the last known
3 addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy
4 thereof in a sealed envelope in the United States mail, first class, postage prepaid, and
5 addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge
6 will be completed no later than 24 hours after the document is filed.

7 **Debtor**

8 ICPW Liquidation Corporation,
9 a CA corporation
10 15260 Ventura Blvd., 20th Floor
11 Sherman Oaks, CA 91403

12 **Debtor**

13 ICPW Liquidation Corporation,
14 a Nevada corporation
15 15260 Ventura Blvd., 20th Floor
16 Sherman Oaks, CA 91403

17 **3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE**
18 **TRANSMISSION OR EMAIL (state method for each person or entity served):**

19 Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on *(date)* March 1, 2018, I served the
20 following persons and/or entities by personal delivery, overnight mail service, or (for
21 those who consented in writing to such service method), by facsimile transmission
22 and/or email as follows. Listing the judge here constitutes a declaration that personal
23 delivery on, or overnight mail to, the judge will be completed no later than 24 hours
24 after the document is filed.

25 **Judge's Copy – VIA OVERNIGHT**

26 Hon. Martin R. Barash
27 United States Bankruptcy Court
28 21041 Burbank Boulevard, Suite 342
Woodland Hills, CA 91367

I declare under penalty of perjury under the laws of the United States that the foregoing is
true and correct.

Date: March 1, 2018

By: /s/ Shiva Delrahim Beck
Shiva Delrahim Beck